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No. 74

In the Supreme Court of the United States

OCTOBER TERM, 1929

ARTHUR E. COLGATE, ADMINISTRATOR OF THE ESTATE OF CLINTON G. COLGATE, DECEASED, APPELLANT

v.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

JURISDICTIONAL STATEMENT OF APPELLEE

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The question presented is whether the proper method of reviewing the judgment of the Court of Claims is by appeal or on writ of certiorari.

Arthur E. Colgate, as administrator of the estate of Clinton G. Colgate, deceased, has taken this appeal in due time. He has also filed a petition for certiorari, which is now pending. We submit that the latter is the only method provided by law for a review of the judgment in this case, and that this appeal should be dismissed.

The statute which it is asserted confers upon this Court appellate jurisdiction as of right is the Act

of March 3, 1927 (c. 408, 44 Stat., Part III, p. 1807), quoted in full in the appellant's Statement in Support of Jurisdiction. The provision here material reads as follows:

> *Provided,* That either party hereto may appeal to the Supreme Court of the United States upon or from any conclusion of law or judgment, from which appeals now lie in other cases, at any time within ninety days after the rendition of judgment.

This statute was enacted subsequent to the Act of February 13, 1925, amending the Judicial Code (c. 229, 43 Stat. 936), which abolished generally appeals from the Court of Claims and provided that all judgments of that court should be reviewed by certiorari or certificate, and not otherwise. It is submitted, however, that the above-quoted language of the statute here in question is not sufficient to show an intention on the part of Congress that special treatment should be accorded to this claim or that the judgment upon it should be reviewed otherwise than in accordance with the Act of February 13, 1925.

The phrase " from any conclusion of law or judgment, from which appeals now lie in other cases," strongly supports this position. No "appeal," as distinguished from an application for a writ of certiorari, would "now (i. e., on March 3, 1927) lie in other cases" from a judgment such as that here involved. The last-quoted phrase tends strongly to

show that the word "appeal," as earlier used in the proviso, should be construed in its broad and popular sense, as meaning a review by this Court in accordance with the applicable general statute providing and limiting the method of such review. Even apart from this phrase, however, we believe that such would be its correct construction.

In *Sisseton and Wahpeton Bands of Sioux Indians* v. *United States*, 277 U. S. 424, cited by appellant, an entirely different situation was presented. In that case the original jurisdiction Act was passed prior to the Act of February 13, 1925, and provided, as was customary, for a right of appeal to this Court. Judgment went against the claimants in the Court of Claims, and their right of appeal was lost by failure to apply for it in time. Thereafter the Act of February 13, 1925, was passed, and later still Congress passed another Act reviving the right of appeal from the judgment of the Court of Claims and granting to the claimants one year in which to take it. In view of these circumstances, this Court held that the statute conferred a right of appeal as distinguished from the right to petition for certiorari.

The Act involved in the *Sisseton and Wahpeton Bands case* was passed after the judgment in the Court of Claims and had reference only to the review of that judgment by this Court. The purpose of the Act here involved is primarily to confer jurisdiction on the Court of Claims.

Since the Act of February 13, 1925, a number of jurisdictional Acts in Indian cases have been passed in which Congress has used the phrase "with right of appeal to the Supreme Court of the United States," sometimes with the addition of the phrase "as in other cases." This was the language customarily employed before the Act of February 13, 1925.

The following is a list of the later Acts, together with the wording of the pertinent provisions:

Act of March 3, 1925 (c. 459, 43 Stat. 1133, 1134), Kansas or Kaw Indians:

> From the decision of the Court of Claims * * * an appeal may be taken by either party as in other cases to the Supreme Court of the United States.

Act of May 14, 1926 (c. 300, 44 Stat. 555), Chippewas of Minnesota:

> With right of appeal to the Supreme Court of the United States by either party as in other cases.

Act of July 2, 1926 (c. 724, 44 Stat. 801), Citizen Band of Pottawatomies:

> With the right of appeal to the Supreme Court of the United States by either party as in other cases.

Act of July 3, 1926 (c. 734, 44 Stat. 807), Crow Indians:

> With right of appeal to the Supreme Court of the United States by either party.

Act of March 2, 1927 (c. 250, 44 Stat. 1263), Assiniboine Indians:

> With right of appeal to the Supreme Court of the United States by either party.

Act of March 3, 1927 (c. 302, 44 Stat. 1349), Shoshone Indians:

> With right of appeal to the Supreme Court of the United States by either party.

Act of May 18, 1928 (c. 624, 45 Stat. 602), Indians of California:

> With the right of either party to appeal to the Supreme Court of the United States.

Act of December 17, 1928 (Public No. 638, 70th Congress), Winnebago tribe:

> With the right of appeal to the Supreme Court of the United States by either party as in other cases.

Act of February 20, 1929 (Public No. 783, 70th Congress), Nez Perce tribe:

> With the right of appeal by either party to the Supreme Court of the United States.

Act of February 23, 1929 (Public No. 798, 70th Congress), Coos (Kowes) Bay, Lower Umpqua and Siuslaw tribes:

> And the right of appeal to the Supreme Court of the United States is hereby granted to both parties.

Act of February 28, 1929 (Public No. 854, 70th Congress), Shoshone tribe:

> That from the decision of the Court of Claims in any suit prosecuted under the authority of this Act an appeal may be taken by either party, as in other cases, to the Supreme Court of the United States.

It is not reasonable to suppose that Congress, after having passed the Act of February 13, 1925, for the purpose of relieving this Court of the burden of appeals as of right from the Court of Claims, and from other courts, intended by such special jurisdictional Acts as those above enumerated, and as the Act involved in this case, to confer upon the claimants the right of appeal regardless of its merit or the importance of the questions involved. Such an intention should not be implied from the general language employed in those Acts. And in the particular Act involved in this case the phrase "from which appeals now lie in other cases" affirmatively indicates a contrary intention.

It is respectfully submitted that this Court is without jurisdiction to entertain this appeal.

CHARLES E. HUGHES, JR.,
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HERMAN J. GALLOWAY,
Assistant Attorney General.
WILLIAM J. HUGHES,
Attorney.

JUNE, 1929.

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